

Assembly Bill No. 2869

CHAPTER 977

An act to amend Section 1748.10 of, and to amend, repeal, and add Section 1748.12 of, the Civil Code, relating to credit card issuers.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2869, Machado. Credit cards: marketing information.

Existing law requires a credit card issuer to provide written notice to all persons who are holders of the issuer's credit cards if the issuer discloses marketing information, as defined, concerning a consumer which discloses the consumer's identity to any person, except specified 3rd parties. The notice is required to describe the cardholder's right to prohibit this disclosure. Existing law specifies the methods of satisfying this requirement.

This bill would revise the requirements for the written notice to provide that it must include both a preprinted form and reference a toll-free telephone number which a card holder may use to exercise the right to prohibit disclosure.

This bill would also, operative April 1, 2002, recast this provision to, among other things, require that a credit card issuer provide the notice before the issuer discloses the information and, if the information is disclosed, at least once per year, as specified. The bill would also revise the definition of marketing information, as specified, and exempt communications to a corporate subsidiary or affiliate of the card issuer that are not used for marketing purposes from the disclosure prohibition, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1748.10 of the Civil Code is amended to read:

1748.10. This act shall be known and may be cited as the "Areias Credit Card Full Disclosure Act Of 1986."

SEC. 2. Section 1748.12 of the Civil Code is amended to read:

1748.12. (a) For purposes of this section:

(1) "Cardholder" means any consumer to whom a credit card is issued, provided that in cases when more than one credit card has been issued for the same account, all persons holding those credit cards may be treated as a single cardholder.

(2) "Credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time

to time upon presentation to obtain money, property, labor, or services on credit. “Credit card” does not mean any of the following:

(A) Any single credit device used to obtain telephone property, labor, or services in any transaction under public utility tariffs.

(B) Any device that may be used to obtain credit pursuant to an electronic fund transfer but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer’s asset account is overdrawn or to maintain a specified minimum balance in the consumer’s asset account.

(C) Any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products, as defined in subdivision (c) of Section 13401 of the Business and Professions Code, which will be used primarily for business rather than personal or family purposes.

(3) “Marketing information” means the categorization of cardholders compiled by a credit card issuer, based on a cardholder’s shopping patterns, spending history, or behavioral characteristics derived from account activity which is provided to a marketer of goods for consideration. “Marketing information” does not include aggregate data which does not identify a cardholder based on the cardholder’s shopping patterns, spending history, or behavioral characteristics derived from account activity or any communications to any person in connection with any transfer, processing, billing, collection, chargeback, fraud prevention, credit card recovery, or acquisition of or for credit card accounts.

(b) If the credit card issuer discloses marketing information concerning a cardholder to any person, the credit card issuer shall provide a written notice to the cardholder that clearly and conspicuously describes the cardholder’s right to prohibit the disclosure to marketers of goods of marketing information concerning the cardholder which discloses the cardholder’s identity. The notice shall include a preprinted form by which the cardholder may exercise this right and shall advise the cardholder of a toll-free telephone number which the cardholder may call to exercise this right.

(c) The requirements of subdivision (b) may be satisfied by furnishing the notice to the cardholder (1) on or with the credit application, (2) with the credit card when it is delivered to the cardholder, or (3) in any manner and at any time, provided that it is furnished prior to the disclosure of marketing information relating to the cardholder. No notice need be furnished to a cardholder to whom prior notice has been given, as to whom no marketing information will be disclosed, or to whom notice has been given prior to the effective date of this act which complies with the provisions of subdivision (b).



(d) An election to prohibit disclosure of marketing information, as provided in subdivision (b), shall terminate upon receipt by the credit card issuer of notice from the cardholder that the cardholder's election under subdivision (b) is no longer effective.

(e) The requirements of subdivisions (b) and (c) do not apply to any of the following communications of marketing information by a credit card issuer:

(1) Communications to any party to, or merchant specified in, the credit card agreement, or to any person whose name appears on the credit card or on whose behalf the credit card is issued.

(2) Communications to consumer credit reporting agencies, as defined in subdivision (d) of Section 1785.3.

(3) Communications to a corporate subsidiary or affiliate of the card issuer.

(4) Communications to a third party when the third party is responsible for conveying information from the card issuer to any of its cardholders.

(f) If the laws of the United States require disclosure to cardholders regarding the use of personal information, compliance with the federal requirements shall be deemed to be compliance with this section.

(g) This section shall become operative on July 1, 1994.

(h) This section shall become inoperative on April 1, 2002, and as of January 1, 2003, is repealed unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 1748.12 is added to the Civil Code, to read:

1748.12. (a) For purposes of this section:

(1) "Cardholder" means any consumer to whom a credit card is issued, provided that, when more than one credit card has been issued for the same account, all persons holding those credit cards may be treated as a single cardholder.

(2) "Credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit. "Credit card" does not mean any of the following:

(A) Any single credit device used to obtain telephone property, labor, or services in any transaction under public utility tariffs.

(B) Any device that may be used to obtain credit pursuant to an electronic fund transfer but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account.

(C) Any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products, as defined in subdivision (c) of Section 13401 of the Business and Professions Code, which will

be used primarily for business rather than personal or family purposes.

(3) “Marketing information” means the categorization of cardholders compiled by a credit card issuer, based on a cardholder’s shopping patterns, spending history, or behavioral characteristics derived from account activity which is provided to a marketer of goods or services or a subsidiary or affiliate organization of the company that collects the information for consideration. “Marketing information” does not include aggregate data that does not identify a cardholder based on the cardholder’s shopping patterns, spending history, or behavioral characteristics derived from account activity or any communications to any person in connection with any transfer, processing, billing, collection, chargeback, fraud prevention, credit card recovery, or acquisition of or for credit card accounts.

(b) If the credit card issuer discloses marketing information concerning a cardholder to any person, the credit card issuer shall provide a written notice to the cardholder that clearly and conspicuously describes the cardholder’s right to prohibit the disclosure of marketing information concerning the cardholder which discloses the cardholder’s identity. The notice shall be in 10-point type and shall advise the cardholder of his or her ability to respond either by completing a preprinted form or a toll-free telephone number that the cardholder may call to exercise this right.

(c) The requirements of subdivision (b) shall be satisfied by furnishing the notice to the cardholder:

(1) At least 60 days prior to the initial disclosure of marketing information concerning the cardholder by the credit card issuer.

(2) For all new credit cards issued on or after April 1, 2002, on the form containing the new credit card when the credit card is delivered to the cardholder.

(3) At least once per calendar year, to every cardholder entitled to receive an annual statement of billings rights pursuant to 12 C.F.R. 226.9 (Regulation Z). The notice required by this paragraph may be included on or with any periodic statement or with the delivery of the renewal card.

(d) (1) The cardholder’s election to prohibit disclosure of marketing information shall be effective only with respect to marketing information that is disclosed to any party beginning 30 days after the credit card issuer has received, at the designated address on the form containing the new credit card or on the preprinted form, or by telephone, the cardholder’s election to prohibit disclosure. This does not apply to the disclosure of marketing information prior to the cardholder’s notification to the credit card issuer of the cardholder’s election.

(2) An election to prohibit disclosure of marketing information shall terminate upon receipt by the credit card issuer of notice from



the cardholder that the cardholder's election to prohibit disclosure is no longer effective.

(e) The requirements of this section do not apply to any of the following communications of marketing information by a credit card issuer:

(1) Communications to any party to, or merchant specified in, the credit card agreement, or to any person whose name appears on the credit card or on whose behalf the credit card is issued.

(2) Communications to consumer credit reporting agencies, as defined in subdivision (d) of Section 1785.3.

(3) To the extent that the Fair Credit Reporting Act preempts the requirements of this section as to communication by a credit card issuer to a corporate subsidiary or affiliate, the credit card issuer may communicate information about a cardholder to a corporate subsidiary or affiliate to the extent and in the manner permitted under that act.

(4) Communications to a third party when the third party is responsible for conveying information from the card issuer to any of its cardholders.

(f) If the laws of the United States require disclosure to cardholders regarding the use of personal information, compliance with the federal requirements shall be deemed to be compliance with this section.

(g) This section shall become operative on April 1, 2002.

